

## **Competitive Bidding Talking Points**

### **Requires All Contracts, Grants Awarded Under This Act Be Competitively Bid.**

The federal government awards hundreds of billions of dollars annually in contracts and grants.

It is becoming a common practice for agencies and Congress to bypass the federal process for competitively awarding contracts and grants.

Between fiscal years 2002 and 2008 contract dollars obligated noncompetitively increased from \$82 billion to \$188 billion.<sup>1</sup>

To ensure that members of Congress and the federal government are good stewards of taxpayer dollars, and to support the President in his effort to eliminate no-bid contracts, this amendment would require that all grants and contracts awarded under this act be competitively bid.

### **President Obama Has Pledged To End No-bid Contracts By Requiring Virtually All Government Contracts To Be Competitively Bid.**

Last year, then-candidate Barack Obama stated “for too long, Washington politicians have wasted billions on no-bid contracts” and he promised to “end abusive no-bid contracts.”

As part of his “Blueprint for Change,” Obama pledged to “ensure that federal contracts over \$25,000 are competitively bid.”

On March 4, 2009, the President issued a memo to all federal agency heads outlining problems associated with government contracting, which included “a significant increase in the dollars awarded without full and open competition.”<sup>2</sup>

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<sup>1</sup> OMB Press Release, “White House to Save \$40 Billion Annually through Contracting Reforms”, July 29, 2009, [http://www.whitehouse.gov/omb/news\\_072909\\_reform/](http://www.whitehouse.gov/omb/news_072909_reform/).

<sup>2</sup> White House Press Release, “Memo for Heads of Executive Departments and Agencies”, March 4, 2009, [http://www.whitehouse.gov/the\\_press\\_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government/](http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government/).

On July 29, 2009, the President issued contracting reform guidance, which included reducing the use of non-competitive contracts.<sup>3</sup>

This amendment supports the President's efforts to eliminate no-bid contracts.

**Contracts And Grants Awarded Under This Bill Should Not Be Exempt From Existing Laws Requiring Competition For Federal Grants And Contracts.**

This legislation provides funding for 303 earmarks, costing taxpayers \$244.5 million. Unfortunately, these congressionally directed spending items are distributed to cities and entities across the country not based on merit or a larger benefit to the entire country, but instead benefit only a few and are handed out based on the whims of lobbyists, special interest groups, and individual members of Congress.

A "no-bid" grant or contract is government funding provided directly to an entity that bypasses the standard process for awarding government funding in which competing bids are solicited in order to select the most cost efficient and qualified entity to perform a service.

According to the most recently published Consolidated Federal Funds Report (CFFR), federal agencies award over \$880 billion in financial assistance alone: \$470 billion in grants, \$381 billion in contracts, and \$29 billion in direct loans.<sup>4</sup>

Specifically, the amendment calls for funds that result in contracts and grants awarded to come into compliance with the following laws:

- **Section 303 of the Federal Property and Administrative Services Act of 1949:** This section of law requires that competitive procedures be in place for all procurements unless there is a specific provision of law that makes an exemption. According to this section, such

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<sup>3</sup> OMB Press Release, "White House to Save \$40 Billion Annually through Contracting Reforms", July 29, 2009, [http://www.whitehouse.gov/omb/news\\_072909\\_reform/](http://www.whitehouse.gov/omb/news_072909_reform/).

<sup>4</sup> U.S. Census Bureau, *Consolidated Federal Funds Report for Fiscal Year 2005*, September 2007, p. v, at <http://www.census.gov/prod/2007pubs/cffr-05.pdf>.

exceptions include: only one source is available, national security needs, and the requirements of an international treaty.

- **10 U.S. Code 2304:** This section requires that competitive procedures be used for all Defense contracts. The Department of Homeland Security often contracts for defense-related goods and services, for which the rules are in a different place in the U.S. Code. There is no substantive difference between the competition rules in place for defense and civilian contracts.

**Federal Acquisition Regulation:** This is the 2,000-page regulatory guide for federal procurement that provides a detailed explanation of how to conduct “full and open competitions.” Such procedures include publishing acquisition opportunities on FedBizOpps.gov, mandatory evidence of appropriate market research by agencies, and promotion

### **Competition Reduces Costs And Saves Taxpayers’ Money.**

The competitive process helps ensure that the government receives the highest-quality products for the least amount of money. Without competition, earmarks and no-bid contracts have caused the taxpayer to spend untold billions on wasteful purchases.

In February 2008, the Department of Interior Inspector General issued a report on sole source contracting within the Department. The IG stated “the Department’s current practices have abused sole source contracting by: modifying the scope of originally competed contracts, resulting in de-facto sole source contracts; using justifications for other than full and open competition that were questionable or not properly documented in the contract files; and failing to establish fair value pricing for sole source contracts, including Section 8(a) contracts.”<sup>5</sup>

That same report highlighted a National Park Service’s contract for the Washington Monument grounds work and found that the contract constituted an illegal sole source award. The IG found that the contracting officer responsible for the project authorized an increase in contract value from \$5 Million to \$44.5 Million. The IG noted that the sole source awards occurred because “[T]he contracting officers opted to take the fast and easy way, which was to modify an existing contract, rather than the

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<sup>5</sup> Department of Interior IG Report, “Sole Source Contracting: Culture of Expediency Curtails Competition in Department of the Interior Contracting (Report No. W-EV-MOA-0001-2007). Page 8”

conscientious and correct method, which was to issue a separate contract and promote competition.”<sup>6</sup>

The report also found ways the Department was circumventing competition within 8(a) firms. Within the 8(a) contracts the IG reviewed, they found that the contract would have task orders under the \$3 million dollar threshold required by FAR to competitively bid among 8(a) vendors. The ID states that “one such contract was estimated to have a total contract value of \$2,999,900, just \$100 under the threshold. It appears that once the contract got close to the \$3 million threshold, a new contract with new task orders would be issued.”<sup>7</sup>

A January 2007 Interior IG report found that out of 119 cooperative agreements reviewed, 100 were issued without soliciting for competition, therefore, there was no way to ensure that the best goods and services were acquired at the best cost to the American taxpayer<sup>8</sup>

In another January 2007 Interior IG report, the IG found that the Bureau of Indian Affairs violated FAR by inappropriately modifying a task order and increasing the value cost from \$1.5 million to \$7.1 million. These modifications lead to an improper sole source contract.<sup>9</sup>

An April 2006 GAO report found one contract where the Interior Department did not consider any alternatives other than sole-source contracting with 8(a) Alaska Native Corporation firms.<sup>10</sup>

Wisconsin recently spent \$47.5 million in federal stimulus funds on two Spanish made passenger trains without using competition.<sup>11</sup>

According to a February 2009 HUD Inspector General Audit Report, the City of Newburgh, NY, which receives \$800,000 annually in Community

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<sup>6</sup> Department of Interior IG Report, “Sole Source Contracting: Culture of Expediency Curtails Competition in Department of the Interior Contracting (Report No. W-EV-MOA-0001-2007).”

<sup>7</sup> Department of Interior IG Report, “Sole Source Contracting: Culture of Expediency Curtails Competition in Department of the Interior Contracting (Report No. W-EV-MOA-0001-2007).” Page 7.

<sup>8</sup> Department of Interior IG Report, “Proper Use of Cooperative Agreements could improve Interior’s Initiatives for Collaborative Partnership,” January 2007.

<sup>9</sup> Department of Interior IG Report, “Bureau of Indian Affairs, Radio Communications Program”, January 2007.

<sup>10</sup> Government Accountability Office, “Increased use of Alaska Native Corporation’s Special 8(a) Provision calls for Tailored Oversight”, GAO-06-399, April 2006.

<sup>11</sup> Stein, Jason, Wisconsin State Journal, “Three Companies Showed Interest in State Purchases of two Trains”, August 4, 2009, <http://www.madison.com/wsj/topstories/460618>.

Development Grants (CDBG), had \$106,209 in unsupported costs for a sole-source consulting contract as part of their CDBG funds.<sup>12</sup>

The AP reported recently that the Defense Department frequently awards no-bid work to small contractors for repairs at military bases using stimulus funds, costing taxpayers \$148 million more than when businesses compete for the work.<sup>13</sup>

The Census Bureau entered into a no-bid contract with the Harris Corporation to produce the handheld computers for the 2010 Census. The contract cost \$600 million and handheld computers were a failure.

The Legal Service Corporation IG recently reported that the agency has had problems with no-bid contracts. The IG found that 37 of the 38 consultant contracts it reviewed had not been competitively bid.

The tally for Hurricane Katrina waste has surpassed \$1 billion dollars because of lucrative government contracts awarded with little competition.<sup>14</sup>

“Several of the contracts were hastily given to politically connected firms in the aftermath of the 2005 storm and were extended without warning months later. Critics say the arrangements promote waste and unfairly hurt small companies.

According to a report issued by the Democrat staff of the House Government Reform Committee, the government awarded 70 percent of its contracts for Hurricane Katrina work without full competition.

- The report found that out of \$10.6 billion in contracts awarded after the storm, more than \$7.4 billion were handed out with limited or no competitive bidding. In addition, 19 contracts worth \$8.75 billion were found to have wasted taxpayer money at least in part, costing taxpayers hundreds of millions of dollars, according to the report.<sup>15</sup>

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<sup>12</sup> Department of Housing and Urban Development Inspector General Audit Report, 2009-NY-1008, <http://www.hud.gov/offices/oig/reports/files/ig0921008.pdf>.

<sup>13</sup> Brett J. Blackledge, “Stimulus Watch: No-Bid Contracts Mean Higher Costs,” *The Associated Press*, 7/17/09

<sup>14</sup> Hope Yen, “Katrina waste: \$1 billion just a beginning?; Auditors expect figure to balloon when no-bid contracts get scrutiny,” *The Decatur Daily/Associated Press*, December 26, 2006;

<sup>15</sup> “Study: Millions wasted in Katrina contracts; 70% of contracts awarded without full bidding, Democratic report says,” *MSNBC*, August 24, 2006; <http://www.msnbc.msn.com/id/14502390/>.

## **“No-bid” Government Contracts And Grants Are Increasing Dramatically.**

In 2000, the federal government awarded \$67.5 billion in non-competitive contracts; that figure rose to \$145 billion in 2005, an increase of 115%.<sup>16</sup>

According to a House Committee on Government Reform report the number of contracts awarded without full competition at DHS increased 739 percent from 2003 to 2005, to \$5.5 billion, more than half of the \$10 billion in contracts awarded by the Department that year.<sup>17</sup>

In FY 2009, Pre-Disaster Mitigation grants, a “competitive” grant program, contained 51 earmarks totaling just under \$25 million, or close to a third of the funds available for the PDM competitive grant program.

## **The Senate Has Supported Competition As Recent As This Year.**

In February of this year, during the debate on the stimulus bill, the Senate voted 97-0 to require all contracts and grants under the Act to be competitively bid.

In May 2006, the Senate also voted 98 to zero to require that emergency hurricane relief and recovery contracts exceeding \$500,000 be subject to competitive procedures.<sup>18</sup>

Three other similar amendments regarding no bid contracts were agreed to by unanimous consent in the Senate.<sup>19</sup>

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<sup>16</sup> Dollars, Not Sense: Government Contracting Under the Bush Administration. United States House of Representatives, Committee on Government Reform - Minority Staff, Special Investigations Division, p. 7-9.

<sup>17</sup> House Committee on Government Reform report: *Waste, Abuse, and Mismanagement in Department of Homeland Security Contracts*; July 2006, pg 3.

<sup>18</sup> [http://hsgac.senate.gov/index.cfm?FuseAction=PressReleases.Detail&Affiliation=r&PressRelease\\_id=%20494%20%20&Month=9&Year=2003](http://hsgac.senate.gov/index.cfm?FuseAction=PressReleases.Detail&Affiliation=r&PressRelease_id=%20494%20%20&Month=9&Year=2003)

<sup>19</sup> Senate Amendment 2605 to S. 2020, November 17, 2005, <http://www.congress.gov/cgi-lis/bdquery/D?d109:1:/temp/~bdAxyV:dbs=n:/billsumm/billsumm.php?id=2> ; Senate Amendment 4254 to S.2766, June 16, 2006, <http://www.congress.gov/cgi-lis/bdquery/D?d109:6:/temp/~bdAxyV:dbs=n:/billsumm/billsumm.php?id=2> ; Senate Amendment 4624 to H.R.5441, July 12, 2006, <http://www.congress.gov/cgi-lis/bdquery/D?d109:7:/temp/~bdAxyV:dbs=n:/billsumm/billsumm.php?id=2>